

118TH CONGRESS  
1ST SESSION

# S. 3410

To prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the nursing home workforce.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2023

Mrs. FISCHER (for herself, Mr. TESTER, Mr. MARSHALL, Mr. LANKFORD, Mr. MANCHIN, Ms. SINEMA, Mr. WICKER, Ms. COLLINS, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the nursing home workforce.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Rural Sen-  
5 iors’ Access to Care Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) According to the Bureau of Labor Statis-  
2           tics, between February 2020 and August 2023,  
3           nursing homes in the United States lost nearly  
4           200,000 employees.

5           (2) Forty-five percent of nursing home pro-  
6           viders have reported a worsening workforce situation  
7           since May 2022.

8           (3) Ninety-six percent of nursing home pro-  
9           viders have reported difficulty in hiring staff.

10          (4) More than ninety percent of nursing home  
11          providers have increased wages and bonuses to re-  
12          cruit and retain staff.

13          (5) Nearly eighty percent of nursing home pro-  
14          viders have hired temporary staff, who are often  
15          much more expensive than permanent staff.

16          (6) The Centers for Medicare & Medicaid Serv-  
17          ices reported that 129 nursing homes closed in  
18          2022, threatening access for America’s seniors, espe-  
19          cially in rural areas.

20          (7) The minimum staffing mandate in the pro-  
21          posed rule entitled “Medicare and Medicaid Pro-  
22          grams; Minimum Staffing Standards for Long-Term  
23          Care Facilities and Medicaid Institutional Payment  
24          Transparency Reporting” published by the Depart-  
25          ment of Health and Human Services on September

1       6, 2023 (88 Fed. Reg. 61352–61429), will result in  
2       nursing home closures, displacing an estimated  
3       450,000 nursing home residents, harming access to  
4       nursing home care, especially in rural areas (as de-  
5       fined in the proposed rule).

6               (8) The minimum staffing mandate in the pro-  
7       posed rule may exacerbate workforce shortages, es-  
8       pecially in rural areas (as defined in the rule).

9       **SEC. 3. PROHIBITION ON FINALIZING PROPOSED STAFFING**  
10                               **RULE.**

11       The Secretary of Health and Human Services may  
12       not implement, enforce, or otherwise give effect to the pro-  
13       posed rule entitled “Medicare and Medicaid Programs;  
14       Minimum Staffing Standards for Long-Term Care Facili-  
15       ties and Medicaid Institutional Payment Transparency  
16       Reporting” published by the Department of Health and  
17       Human Services on September 6, 2023 (88 Fed. Reg.  
18       61352–61429), and may not promulgate any substantially  
19       similar rule.

20       **SEC. 4. ADVISORY PANEL ON NURSING HOME WORKFORCE.**

21               (a) IN GENERAL.—Not later than 60 days after the  
22       date of the enactment of this section, the Secretary of  
23       Health and Human Services (in this section referred to  
24       as the “Secretary”) shall establish the Advisory Panel on

1 the Nursing Home Workforce (in this section referred to  
2 as the “Panel”).

3 (b) MEMBERSHIP.—

4 (1) NUMBER AND APPOINTMENT.—The Panel  
5 shall be composed of 17 members representing var-  
6 ious geographic areas, appointed by the Secretary as  
7 follows:

8 (A) 1 representative of the Secretary, who  
9 shall serve as the chair of the Panel.

10 (B) 2 registered nurses who actively fur-  
11 nish services in a skilled nursing facility or  
12 nursing facility, one of whom shall represent a  
13 rural area.

14 (C) 2 licensed professional nurses who ac-  
15 tively furnish services in a skilled nursing facil-  
16 ity or nursing facility, one of whom shall rep-  
17 resent a rural area.

18 (D) 2 nurse aides who actively furnish  
19 services in a skilled nursing facility or nursing  
20 facility, one of whom shall represent a rural  
21 area.

22 (E) 2 physicians who actively furnish serv-  
23 ices in a skilled nursing facility or nursing facil-  
24 ity, one of whom shall represent a rural area.

1 (F) 1 representative of the Centers for  
2 Medicare & Medicaid Services.

3 (G) 1 representative of the Health Re-  
4 sources and Services Administration.

5 (H) 2 individuals with professional exper-  
6 tise related to the nursing home workforce, one  
7 of whom shall have experience with respect to  
8 the nursing home workforce in rural and under-  
9 served areas.

10 (I) 1 licensed administrator or representa-  
11 tive of a rural not-for-profit skilled nursing fa-  
12 cility.

13 (J) 1 licensed administrator or representa-  
14 tive of a rural for-profit skilled nursing facility.

15 (K) 2 representatives of State boards of  
16 nursing.

17 (2) TIMING OF APPOINTMENTS.—Each of the  
18 appointments under paragraph (1) shall be made not  
19 later than 60 days after the date of the enactment  
20 of this section.

21 (3) TERMS; VACANCIES.—Each member shall be  
22 appointed for a term not to exceed 2 years, and a  
23 vacancy in the Panel shall be filled in the manner  
24 in which the original appointment was made.

1           (4) QUORUM.—13 members of the Panel shall  
2 constitute a quorum.

3           (5) FEDERAL ADVISORY COMMITTEE ACT.—  
4 Chapter 10 of title 5, United States Code, shall  
5 apply to the Panel.

6           (c) DUTIES.—

7           (1) MEETINGS.—

8           (A) FREQUENCY.—The Panel shall meet  
9 not later than 180 days after the date on which  
10 the appointments described in subsection (b)  
11 are made, and not less frequently than twice  
12 per year thereafter.

13           (B) PUBLIC ACCESS.—The Panel shall  
14 make available on a public website of the De-  
15 partment of Health and Human Services—

16           (i) real-time virtual access to each  
17 meeting of the Panel; and

18           (ii) not later than 30 days after each  
19 such meeting, a recording and transcript of  
20 the meeting.

21           (2) REPORTS.—

22           (A) INITIAL REPORT.—Not later than 60  
23 days after the initial meeting of the Panel  
24 under paragraph (1)(A), the Panel shall submit  
25 to the Secretary, the Committee on Ways and

1 Means and the Committee on Energy and Com-  
2 merce of the House of Representatives, and the  
3 Committee on Finance of the Senate, and shall  
4 publish on a public website of the Centers for  
5 Medicare & Medicaid Services, a report on the  
6 state of the nursing home workforce, which  
7 shall include—

8 (i) an assessment of the state of the  
9 nursing home workforce in rural and un-  
10 derserved areas, including an analysis of—

11 (I) workforce shortages; and

12 (II) with respect to individuals  
13 entitled to benefits under part A of  
14 title XVIII of the Social Security Act  
15 (42 U.S.C. 1395 et seq.) and individ-  
16 uals entitled to medical assistance  
17 under title XIX of such Act (42  
18 U.S.C. 1396 et seq.), barriers to ac-  
19 cess to skilled nursing facilities and  
20 nursing facilities caused by such  
21 shortages;

22 (ii) an analysis of regulations, sub-  
23 regulatory guidance, and guidance to State  
24 survey agencies issued by the Secretary  
25 with respect to skilled nursing facilities

1 and nursing facilities, and the effects of  
2 such regulations and guidance on the nurs-  
3 ing home workforce;

4 (iii) recommendations for the Sec-  
5 retary to strengthen the nursing home  
6 workforce, including recommendations for  
7 decreasing regulatory burdens for skilled  
8 nursing facilities and nursing facilities and  
9 making financial investments in training  
10 for health professionals; and

11 (iv) other information as the Panel  
12 determines necessary.

13 (B) SUBSEQUENT REPORTS.—Not later  
14 than 1 year after submitting the initial report  
15 under subparagraph (A), and annually there-  
16 after, the Panel shall submit and publish an up-  
17 dated report in the same manner as required  
18 under such subparagraph.

19 (d) DEFINITIONS.—In this section, the following defi-  
20 nitions apply:

21 (1) NURSING FACILITY.—The term “nursing  
22 facility” has the meaning given such term in section  
23 1919(a) of the Social Security Act (42 U.S.C.  
24 1396r(a)).



1           (2) NURSING HOME WORKFORCE.—The term  
2           “nursing home workforce” means the workforce of  
3           health professionals that provide direct resident care  
4           in skilled nursing facilities and nursing facilities.

5           (3) RURAL AREA.—The term “rural area”  
6           means any area outside a metropolitan statistical  
7           area.

8           (4) SKILLED NURSING FACILITY.—The term  
9           “skilled nursing facility” has the meaning given such  
10          term in section 1819(a) of the Social Security Act  
11          (42 U.S.C. 1395i–3(a)).

12          (5) UNDERSERVED AREA.—The term “under-  
13          served area” means an area that is—

14                (A) a health professional shortage area, as  
15                such term is defined in section 332(a)(1)(A) of  
16                the Public Health Service Act (42 U.S.C.  
17                254e(a)(1)(A)); or

18                (B) designated as a medically underserved  
19                area pursuant to section 330(b)(3)(A) of such  
20                Act (42 U.S.C. 254b(b)(3)(A)).

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